

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AM GENERAL LLC,

Plaintiff,

v.

ACTIVISION BLIZZARD, INC.,
ACTIVISION PUBLISHING, INC., and
MAJOR LEAGUE GAMING CORP.,

Defendants.

CASE NO. 1:17-cv-08644-GBD

DECLARATION OF TIMOTHY M. CARTER

I, Timothy Michael Carter, hereby declare as follows:

1. I am an attorney at law, duly licensed to practice law in the State of New York and New Jersey. I have been admitted to this Court *pro hac vice* in connection with this action. I am an associate with the law firm of Mitchell Silberberg & Knupp LLP, attorneys of record for Defendants Activision Blizzard, Inc., Activision Publishing, Inc. (“Activision”), and Major League Gaming Corp. (collectively, “Defendants”). I submit this Declaration in support of Defendants’ Reply in support of their Motion for Summary Judgment, including their response to Plaintiff AM General LLC’s (“Plaintiff” or “AM General”) Counter-Statement of Facts and Defendants’ second, concurrently filed Motion to Strike. I have personal knowledge of the facts set forth herein, and if called as witness, I could and would competently testify to them.

2. On February 28, 2019, Defendants took the deposition of Robert Gold, AM General’s 30(b)(6) corporate designee. Attached hereto as **Exhibit 1** (filed under seal) is a true and correct copy of relevant excerpts of the transcript of Mr. Gold’s deposition.

3. On April 18, 2019, Defendants took the deposition of third party Daniel Thompson. Attached hereto as **Exhibit 2** (filed under seal) is a true and correct copy of relevant excerpts of the transcript of Mr. Thompson's deposition.

4. In connection with AM General's opposition to Defendants' Motion for Summary Judgment, Plaintiff submitted a declaration signed by its former employee Robert J. Gula. On or about December 21, 2018, AM General produced a deposition transcript of Mr. Gula's testimony in the prior action referenced in Mr. Gula's declaration, dated April 23, 2004. Attached hereto as **Exhibit 3** (filed under seal) is a true and correct copy of that deposition transcript as produced by AM General bearing Bates numbers AMG0027339 through AMG0027350.

5. As Exhibit 142 to the Declaration of Cory D. Struble filed on July 5, 2018 in opposition to Defendants' Motion for Summary Judgment (re-filed July 8, 2018), Plaintiff attached an expert report of Dr. Yoram (Jerry) Wind. Appendix C of this report, titled "The Stimuli," contains a hyperlink reading "**Download videos via this link**," which in turn provides a link to the URL https://www.dropbox.com/sh/tq8b2jtk1trl7xt/AAAvYP_F1x6YA4YgdSKOYn1Ja?dl=0. On or about July 24, 2019, I clicked this hyperlink and was able to access and download copies of the "Test Video" and "Control Video" described in the aforementioned Appendix C. True and correct copies of those two videos as downloaded by me are respectively attached hereto as **Exhibit 4** and **Exhibit 5**, submitted to the Court on a compact disc.

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6. Attached hereto as **Exhibit 6** is a true and correct copy of excerpts from AM General's Responses to Defendants' First Set of Requests for the Production of Documents to AM General, served by AM General on or about May 4, 2018.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 25th day of July, 2019 at New York, New York.



Timothy M. Carter